

INTERLOCAL AGREEMENT

This Agreement is entered into as of the _____ day of _____, 2010, by and between the CITY OF NORTH BEND (the “City”), and FIRE DISTRICT NO. 38 (“District 38”) (collectively, the “Parties” and each a “Party”). This Agreement is made pursuant to chapter 39.34 RCW (the “Interlocal Cooperation Act”) and has been authorized by the governing body of each Party. Each of the Parties is a “public agency” as defined in the Interlocal Cooperation Act.

RECITALS

WHEREAS, each of the Parties is responsible for providing fire service to residents in the Snoqualmie Valley within King County, Washington;

WHEREAS, the Parties have decided to develop and construct a fire station jointly and to share in the costs and ownership of such station;

WHEREAS, each Party is seeking approval from their voters for the issuance of general obligation bonds to finance their portion of the costs of acquiring and constructing the fire station; and

WHEREAS, the Parties now wish to establish their respective rights and responsibilities with respect to the fire station;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. PROJECT DESCRIPTION; PROJECT LAND.

A. The Project will consist of the Project Land (hereinafter defined) and the fire station to be developed thereon, including landscaping and related improvements, including on-site parking and storm water retention (collectively, the “Project”). A conceptual, programmatic description of the Project is attached as Exhibit A. For purposes of this Agreement, the “Facility” shall mean the building and improvements constructed upon the Project Land.

B. The City and District will utilize the real property located on North Bend Way adjacent to the City’s Public Works shop for the development of the Project, and shall select the exact location after consultation with the Project Architect. The parcel will at least equal the minimum needed to appropriately support the Project (the “Project Land”).

SECTION 2. NO SEPARATE LEGAL ENTITY. No separate legal entity is created by this Agreement.

SECTION 3. DESIGN AND CONSTRUCTION

A. The City shall be responsible for the design and construction of the Project, and shall seek input from District and Eastside Fire & Rescue in a timely manner during the design process. The Architect on this project shall be TCA, having previously been selected pursuant to the provisions of RCW Chapter 39.80.

B. Eastside Fire & Rescue or its successor in providing fire protection services to the Parties ("EF&R"), as the end user of the Project, shall review the final architectural design prior to construction. The District and City shall review and approve the final architectural design prior to construction.

C. After final design work is completed, the City shall be responsible for the preparation of the request for bids for construction of the Project. The request for bids shall not be issued unless and until the electors of both Parties have approved the issuance of bonds for the project. If, before April 30, 2011, the voters of either Party have not authorized bonds sufficient to pay for that Party's portion of the necessary construction or acquisition costs as referenced herein, then the provisions of Paragraph 9 shall apply.

D. After the contractor for the Project is selected (pursuant to the public bidding process of the City with award to a qualified bidder), construction shall be administered by the City, and the City shall use an independent Project Manager to oversee the project. The cost of compensating the Project Manager will be included as a reimbursable cost.

E. The City shall be responsible for the management of the Project, including the administration of finances. Such management shall at all times be conducted in good faith and the City shall provide a bi-weekly report on the project to the District.

SECTION 4. FINANCES; COST SHARING

A. The City shall manage and administer the finances of the Project with the participation of the Cash Management Supervisor of the Finance and Business Operations Division, Department of Executive Services, King County (the "King County Finance Division"), serving as ex officio treasurer of the District.

B. The City and the District will share in the costs of the Project as described in Exhibit A with the District (as configured on the date of bond election) paying 57% and the City paying 43%, provided, however, the total cost of the Project shall not exceed Five Million dollars (\$5,000,000) without the express written consent of the Parties. If the architect's final estimate of costs of construction exceeds Five Million dollars (\$5,000,000), either Party may opt to terminate this ILA.

C. The District shall pay the City for the value of the Project Land identified in Section 1 in the amount of \$41,953 per acre necessary (as dictated in the plans approved pursuant to paragraph 3 (B)), for the construction of the Project. This obligation is owed directly to the City and is in addition to any financial obligations of the District identified in Section 4 (B) above. Said monies should be paid within 60 days of the approval and issuance of the Site Plan Permit for the Project, assuming prior approval of the bond issuance by both jurisdictions as described in Section 9.

SECTION 5. BUDGET PREPARATION AND REPORTS

A. Within ninety (90) days of the execution of this Agreement, the City, Architect and EF&R shall prepare, and present to the District for its approval, a proposed budget (the "Budget") for the financing, design, construction, independent Project Management, and equipping of the Project. The Parties agree that the budget for the design, construction and equipping of the Project shall include a contingency of not less than fifteen (15) percent. The City shall manage and administer the Project within the limits of the Budget.

B. No Party shall enter into any agreement or contract related to the Project which would result in an approved Budget category being exceeded by 10% or more, or which would result in the total Budget being exceeded by any amount. The Budget may be amended with the mutual written consent of both Parties.

C. The City shall provide the District and EF&R with all architect reports on the status and progress of the Project, within two business days of City receipt of those reports.

D. If one Party wishes to voluntarily increase the budget to modify the approved plans, it may do so subject to approval by the other Party. However, all additional costs related to the modifications shall be paid in full by the Party that has requested such changes.

E. If, during construction of the Project, cost overruns are incurred in excess of the contingency included in the final project budget, the Parties shall share any such necessary increased costs on an equal basis.

SECTION 6. INSURANCE

A. The Parties shall secure and maintain during the term of this Agreement, property damage insurance covering the Project, including all improvements, including earthquake, flood, boiler, machinery insurance in an amount equal to at least full replacement cost, subject to an appropriate deductible as approved by the Parties and general liability insurance with limits of liability of not less than one million dollars per

occurrence and two million dollars annual aggregate for bodily injury, personal injury and property damage.

B. The Parties shall jointly purchase and maintain property insurance on their own personal property in the Facility, at full replacement cost, subject to an appropriate deductible as approved by the Parties.

C. The insurance required by this Section 6 may be provided by EF&R.

SECTION 7. OWNERSHIP, MAINTENANCE AND OPERATION

A. The Facility shall be jointly owned by the Parties as tenants in common, with each party owning fifty percent (50%).

B. The City and District shall use the Facilities on a non-exclusive basis and Eastside Fire & Rescue or such other entity(ies) as may be designated by the Parties to provide fire protection services will cooperate and exercise good faith in the joint use and operations of the Station. For purposes of implementing the provisions of RCW 35A.14.400, the Parties agree that the District's ownership interest herein shall not be an asset subject to valuation and/or transfer as a result of annexation of a portion of the District by the City. Further, the Parties agree that in consideration of the difference between the cost-sharing allocation in Section 4 (B) and the ownership allocation in Section 7 (A), the City will not seek any asset transfer with respect to annexation of District territory that has occurred prior to the date of this Agreement, and in the event of any future annexation(s) with respect to which an asset transfer may apply, the District shall be credited with a cumulative amount of up to 3.5% of the total Project cost (*i.e.*, \$175,000, as it may be increased or decreased if the total Project cost is other than \$5,000,000).

C. So long as the current Interlocal Agreement with EF&R remains in force and effect, maintenance and operations, including fire service, shall be provided by EF&R pursuant to the terms of that agreement, and the Parties shall make payments for such services in accordance with the funding model in that Interlocal Agreement. In the event that Capital Improvements to the Facility become reasonably necessary during the term of this Agreement, then in that event the Parties shall each pay one-half of such Capital costs.

D. In the event that the Interlocal Agreement with EF&R is terminated by either Party or either Party fails to renew its participation in such Interlocal Agreement with EF&R or with another entity approved by both Parties, or if EF&R should cease to exist, either Party or its successor shall have the right to use the Project facilities for EMS, firefighting and life-saving services and/or other public safety operations as provided in Section 7(B) above.

E. In the event that separate operations are instituted by the Parties, the ongoing maintenance costs of the facility shall be paid according to the EF&R funding model (% allocation based on relative assessed valuation within combined service areas) unless such an allocation of costs is inequitable as determined by a finder of fact after application of the process set forth in Section 10.

SECTION 8. INDEMNIFICATION

A. To the extent permitted by law, the City shall protect, defend, indemnify and hold the District, the members of its governing body, and its officers, employees and agents harmless from any and all costs, claims, judgments or awards of damages arising out of or in any way resulting from the negligent acts or omissions of the City, the members of its governing body, and its officers, employees or agents relating to or in the performance of this Agreement.

B. To the extent permitted by law, District 38 shall protect, defend, indemnify and hold the City, the members of its governing body, and its officers, employees and agents harmless from any and all costs, claims, judgments or awards of damages arising out of or in any way resulting from the negligent acts or omissions of District 38, the members of its governing body, and its officers, employees or agents relating to or in the performance of this Agreement.

SECTION 9. TERM OF AGREEMENT

All of the ongoing obligations identified in this Agreement are conditioned upon the approval by the electors of each of the Parties of bonds to finance the Project. If the electors of both the District and the City have not approved bonds to finance their respective portions of the Project before April 30, 2011, then this Agreement shall automatically terminate on that date, provided, however, any expenses or costs incurred by either party prior to that date as part of fulfilling the obligations of this agreement, shall remain obligations of the responsible party or parties. If the electors of both the District and the City do approve bonds to finance this Project, then this Agreement shall remain in effect until it is terminated by mutual written agreement of the Parties or terminated pursuant to Section 3 (C), Section 4 (B), or in accordance with applicable law.

SECTION 10. RESOLUTION OF DISPUTES.

A. If a dispute arises between the Parties concerning the performance of any provision of this Agreement or the interpretation thereof, the Parties agree to follow the procedures set forth herein. It is the goal of the parties to resolve differences as early in this step-process as possible.

B. Step One – Informal Discussions. Each Party shall designate a representative, who shall meet and attempt to resolve the dispute. This may involve more than one meeting.

C. Step Two – Written Notification and Resolution. If informal discussions are not successful, then the aggrieved Party shall mail, via certified mail, written notice of dispute to the other Party's address shown in Section 11 of this Agreement. The notice shall set forth the nature of the dispute and the desired outcome. A written response shall be provided by the recipient of the notice within ten (10) days' receipt of the certified, mailed notice. The response to the notice shall include the respondent's version of the dispute and a proposed resolution. The Parties shall meet within then (10) business days following respondent's answer to determine whether the dispute can be resolved amicably. If the dispute is amicably resolved, the Parties shall sign a memorandum of understanding with regards thereto.

D. Step Three – Mediation. If the Parties are unable to resolve their differences at Step Two, the Parties will endeavor to settle the dispute by mediation. Such mediation will be non-binding but a condition precedent to having the dispute resolved pursuant to Arbitration, below. Mediation shall commence, unless otherwise agreed, within thirty (30) days of a Party's written request to the other Party for mediation of a dispute. Any resolution of the dispute at this stage shall be reduced to writing and, if the resolution involves an interpretation of the Agreement herein, the Agreement herein shall be amended to include the interpretation.

E. Step Four – Arbitration. If the Parties are unable to resolve their differences at Step Three, the dispute may be resolved by arbitration upon mutual agreement of the Parties. A written notice requesting arbitration must be delivered to the other Parties. The Parties will select an arbitrator by mutual agreement. If the parties cannot agree on an arbitrator within 10 working days after the arbitration request notice has been received, then each Party will appoint a non-interested representative who shall jointly choose an arbitrator. If an arbitrator is not selected within 30 days after the arbitration request notice has been received, then either party may institute suit in King County Superior Court.

SECTION 11. MISCELLANEOUS PROVISIONS

A. This Agreement may be amended or terminated only upon consent of both Parties hereto, pursuant to Section 3 (C), Section 4 (B), Section 9, or in accordance with applicable law. Any amendment or termination shall be in writing and signed by the parties.

B. The waiver by any Party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

C. Nothing in this agreement shall impair a Party's right to seek injunctive relief from the Court if immediate and irreparable injury, loss or damage to any rights arising from this Agreement will occur before Arbitration can be conducted.

D. This Agreement is solely for the benefit of the Parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

E. The records and documents with respect to all matters covered by this Agreement shall be subject to audit by the Parties during the term of this Agreement and three (3) years after termination or such other longer period as may be required by applicable law.

F. If any provision of this Agreement or application thereof to any Party or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

G. This Agreement shall be effective whether signed by the Parties on the same document or in counterparts.

H. Nothing in this Agreement shall be construed to limit or alter the underlying statutory authority or the responsibilities of the District or the City.

I. All notices or other communications shall be deemed sufficient hereunder if made in writing and delivered both by electronic mail and by first-class mail, postage prepaid, to each Party at its respective address set forth below, or such other address as such Party may hereafter designate to the others in writing:

CITY OF NORTH BEND
City Administrator
211 Main Avenue N.
P.O. Box 896
North Bend, WA 98045

FIRE DISTRICT NO. 38
Board of Commissioners
P.O. Box 44
North Bend, WA 98045

Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence.

J. This Agreement shall be filed with the King County Office of Records and Elections.

IN WITNESS WHEREOF, this Agreement has been executed by each Party as set forth below:

CITY OF NORTH BEND

FIRE DISTRICT NO. 38

By: _____
Title: _____

By: _____
Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A

Project Description

The proposed City of North Bend/ King County FD 38 fire station will be designed to be a community friendly facility which fits in with and enhances the character of the City. The energy efficient fire station will include a public meeting room capable of seating fifteen people, an apparatus bay to house at least six response vehicles, eight sleeping rooms, crew restrooms, men's and woman's public restrooms, a decontamination room, fitness room, and ancillary storage, living, workroom, office spaces. The station will be designed to meet the standards set by EF&R and include the essentials of a modern fire station.